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MAY - 8 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

The Provision of Interstate and
International Interexchange Tele-
communications Services Via The
"Internet" By Non-Tariffed,
Uncertified Entities

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COMMENTS

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Sprint Corporation, on behalf of Sprint Communications Company, L.P. and the Sprint local telephone companies, hereby respectfully submits its comments on the above-captioned "Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking" filed March 4, 1996 by America's Carriers Telecommunication Association ("ACTA"). As discussed briefly below, the Commission lacks the jurisdictional authority to grant most of the relief requested by ACTA, and there are severe technical and administrative problems associated with ACTA's proposal. The Commission does, however, have the authority to address the issue which is the underlying cause of the problem about which ACTA complains: arbitrage due to uneconomic interstate access charges. The Commission should proceed in the interconnection and Joint Board dockets¹ to adopt and implement rules to eliminate non-cost based subsidies from interstate access rates.

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking released April 19, 1996; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing a Joint Board released March 8, 1996.

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In its Petition, ACTA states that various entities are providing Internet software and hardware which enable Internet users to make free local, interexchange and international calls using a personal computer.² It complains that these entities are operating as uncertified and unregulated common carriers, in contravention of FCC rules, and seeks the following relief:

- A declaratory ruling establishing the Commission's authority over interstate and international telecommunications services using the Internet;
- A Commission order that various parties (including but not limited to VocalTec, Inc.; Internet Telephone Company; Third Planet Publishing, Inc.; Camelot Corp.; and Quarterdeck Corp.) stop provisioning Internet phone software and hardware immediately unless such provisioning complies with the regulatory requirements of the Communications Act of 1934; and
- Initiation of a rulemaking proceeding to consider rules to govern the use of the Internet for the provision of telecommunications services.

ACTA correctly points out that it is far cheaper to provide interexchange telecommunications services if the service provider does not have to pay interstate switched access charges, and that the ability to avoid access charges may give Internet-based providers of basic services a significant financial advantage over IXCs.³ However, the relief which ACTA seeks is unworkable for

² The user does pay for the software and hardware as well as monthly charges to the Internet access provider.

³ Enhanced service providers (ESPs) obtain access services in the form of flat-rated B-1 lines purchased out of local service tariffs, rather than usage-sensitive access facilities purchased out of interstate access tariffs. The Commission decided in 1991 to retain the so-called "ESP exemption" (*Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, 6 FCC Rcd 4524, 4535 (¶60) (1991) (noting that replacing the ESP exemption "would disrupt the enhanced services industry during a time of rapid transition, without yielding concomitant benefits"), and its

Footnote continued on next page

several reasons. First, the Commission does not have the legal authority to order various named and unnamed respondents (VocalTec, Internet Telephone Company, etc.) to stop "arranging for, implementing, and marketing" software used to place telephone calls over the Internet (ACTA Petition, p. 4). Internet software vendors are not common carriers providing basic telecommunications services subject to the Communications Act of 1934 or the Telecommunications Act of 1996. The 1934 Act defines wire communications as "the transmission of writing, signs, signals, pictures, and sounds...by aid of wire, cable, or other like connection between the points of origin and reception of such transmission...." Software vendors clearly do not provide wire communications and thus there is no basis for the Commission to assert Title II authority over such vendors.

Second, neither the Commission nor, for that matter, the Internet access provider or the underlying IXC, has the technical ability to determine when the Internet is being used to provide basic telephone services. Telephone conversations over the Internet are not provided over discrete Internet facilities, and the data stream associated with telephone conversations is identical to that associated with data transmissions or other enhanced services. Thus, there is no way to enforce a ban on the use of Internet telephone software or to ensure that telephone

reasons for retaining the exemption remain as sound today as they were in 1991. Indeed, the rapid growth in the enhanced services marketplace (including use of the Internet) is due in large measure to low access charges, which allow ESPs to offer service at rates attractive to the mass market.

conversations using such software are assessed usage-sensitive access charges.

Third, and most important, ACTA's solution does not address the root cause of the arbitrage problem: uneconomic interstate access charges. Unless the underlying problem is addressed, any attempt to resolve the Internet telephone issue will be ineffective. Rather than attempting to devise an unenforceable regulatory regime whose legal basis is clearly suspect, the Commission should instead focus on rationalizing the system of interstate access charges, a matter over which it clearly has legal jurisdiction and subject matter expertise.

There is no dispute that interstate access charges are far above economic cost. Removing access subsidies -- in particular, eliminating the carrier common line charge and the residual interconnection charge -- to push access rates to cost is a crucial step to the development of competition in the interexchange, exchange access, and local markets and will, as an additional salutary side effect, minimize or possibly eliminate the problem about which ACTA complains. If all telecommunications carriers were able to obtain access at cost-based levels, arbitrage opportunities (using flat-rated B-1 lines rather than usage-sensitive interstate access lines) would evaporate to a large degree and probably disappear entirely. Service providers would have no regulation-induced financial incentive to use the Internet to provide basic voice service, nor would they have an access charge-related advantage over IXC's in the provision of basic common carrier services.

Use of the Internet to place telephone calls today appears to be a relatively minor problem.⁴ However, it is conceivable that over time and absent access reform, improvements to Internet hardware and software and widening access to the Internet may cause the volume of basic telephone service over the Internet to increase greatly.⁵ Furthermore, the same issue of providing basic service over technologically advanced platforms arises in the context of frame relay and ATM (Asynchronous Transfer Mode). Unless interstate access charges are rationalized, some entrepreneur will take advantage of the arbitrage opportunities resulting from uneconomic access rates to offer basic services at rates which are lower than those charged by traditional IXCs using interstate access facilities. Thus, prompt action by the Commission to reform access charges is crucial.

⁴ Insofar as Sprint is aware, no party has been able to quantify the extent to which the Internet is being used to place telephone calls. However, given the relatively poor quality of Internet voice connections and the constraints faced by Internet telephone callers, Sprint believes that the volume of such traffic today is quite small. The relatively low volume of basic voice traffic over the Internet is another reason why the Commission should be extremely cautious about attempting to put in place a complicated and burdensome regulatory regime (again assuming *arguendo* that the Commission even has the authority to do so).

⁵ Indeed, it is Sprint's understanding that both Microsoft and Netscape have included Internet telephone technology on their new browsers, and that CompuServe is offering VocalTec's software to its subscribers free of charge.

Respectfully submitted,

SPRINT CORPORATION

Norina T. Moy

Leon M. Kestenbaum

Jay C. Keithley

Michael B. Fingerhut

Norina T. Moy

1850 M St., N.W., Suite 1110

Washington, D.C. 20036

(202) 857-1030

May 8, 1996

CERTIFICATE OF SERVICE

I, Joan A. Hesler, hereby certify that on this 8th day of May, 1996, a true copy of the foregoing "**COMMENTS**" of Sprint Corporation, was served first class mail, postage prepaid, or hand delivered, upon each of the parties listed below.


Joan A. Hesler

Regina Keeney
Chief
Common Carrier Bureau
Federal Communications Comm.
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Kevin Werbach
Common Carrier Bureau
Room 544
Federal Communications
Commission
1919 M Street, N.W.
Washington, D.C. 20554

Charles Helein
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, VA 22102

International Transcription
Service
1919 M Street, N.W.
Washington, D.C. 20554